

§ 1102.7

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reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Section will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Section will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Section will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Section for another information access request.

(c)(1) The Section's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Commissioner, United States Section, International Boundary and Water Commission, 4171

North Mesa, Suite C-310, El Paso, TX 79902-1422. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Commissioner, who may consult with other officials of the Section as appropriate. The requester will be notified within thirty working days from the date on which the Section received the appeal.

§ 1102.7 The Section's determination and appeal procedures.

Upon receipt of any request for records of information under the Act the following guidelines shall be followed:

(a) The FOIA Officer will determine within 10 days (excepting Saturdays, Sundays, and legal holidays) after receipt of any such request whether to comply with such request and will immediately notify the person making such request of such determination, the reasons therefore, and of the right to such person to appeal to the Commissioner any adverse determination.

(b) All appeals should be addressed to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite, C-310, El Paso, TX 79902-1422, and should be clearly identified as such on the envelope and in the letter of appeal by using the marking "Freedom of Information Appeal" or "Appeal for Records" or the equivalent. Failure to properly address an appeal may defer the date of receipt by the Section to take into account the time reasonably required to forward the appeal to the Commissioner. In each instance when an appeal is incorrectly addressed to the Commissioner, he shall notify the person making the appeal that his appeal was improperly addressed and of the date the appeal was received by the Commissioner. The Commissioner will make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of an appeal. If on appeal the denial or the request is in whole or in part upheld, the Commissioner will notify the person making such request of the provisions for

judicial review under the Act. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in case of partial denials). In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(c) In unusual circumstances, as set forth in paragraph (d) of this section, the time limits for responding to the original request or the appeal may be extended by not more than an additional 10 working days by written notice to the person making a request. This notice must be sent within either 10- or 20-day time limit and will specify the reason for the extension and the date on which determination is expected to be dispatched. The extension may be invoked only once during the consideration of a request either during the initial consideration period or during the consideration of an appeal, but not both.

(d) The unusual circumstances are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the requestor among two or more components of the agency having substantial subject-matter interest therein.

(e) If the FOIA Officer receives a request which is of proper concern to an agency or entity outside the Section, it will be returned to the person making the request, advising the requester to refer it to the appropriate agency or entity if requester desires, and providing the requester with the name or title, address and other appropriate information. An information copy of the

request and the letter of referral will be forwarded promptly to the agency or entity outside the Section that may expect the request. In the event the FOIA Officer receives a request to make available a record or provide information which is of interest to more than one agency (Federal, State, municipal, or legal entity created thereby), the FOIA Officer will retain and act upon the request if the Section is one of the interest agencies and if its interest in the record is paramount.

(f) The Commissioner's determination on an appeal shall be in writing and when it denies records in whole or in part, the letter to the person making a request shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding.

(2) A statement that the decision is final for the Section.

(3) Advice that judicial review of the denial is available in the district in which the person making the request resides or has his principal place of business, the district in which the Section's records are situated, or the District of Columbia.

(4) The names and titles or positions of each official responsible for the denial of a request.

When appropriate, the written determination may also state how an exemption applied in that particular case, and, when relevant, why a discretionary rebase is not appropriate.

(g) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where after diligent effort this has not been achieved within the required period, the FOIA Officer may advise the person making the request that a determination to presently deny the request has been made because the records or information have not been found or examined, that the determination will be considered when the search or examination is completed and the time within which completion is expected, but that the person making the request may immediately file an administrative appeal to the Commissioner.